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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JUL 05 2007

BRUCE A. BARKET

DANIEL WIRSHUP,

Plaintiff,

-against-

SUFFOLK COUNTY POLICE DEPARTMENT,
SUFFOLK COUNTY DISTRICT ATTORNEY,
THOMAS J. SPOTA; SUFFOLK COUNTY
DISTRICT ATTORNEY'S OFFICE, ASSISTANT
DISTRICT ATTORNEYS JANE and JOHN DOE
"I" - "S;" ASSISTANT DISTRICT ATTORNEYS
KEVIN WARD, JOHN SCOTT PRUDENTI, and
CHRISTOPHER NICOLINO; DETECTIVES/POLICE
OFFICERS TOM IACOPELLI, ROBERT AMATO,
and RAYMOND FELICE, DETECTIVES/POLICE
OFFICERS JOHN and JANE DOE "I" - "S,"
and THE COUNTY OF SUFFOLK,

Defendants.

666 Old Country Road
Garden City, New York

May 31, 2007
11:18 a.m.

EXAMINATION BEFORE TRIAL of THOMAS

IACOPELLI, one of the Defendants in the
above-entitled action, held at the above time
and place, taken before Holly Daloia, a
shorthand reporter and Notary Public of the
State of New York.

A P P E A R A N C E S:

LAW OFFICE OF BRUCE BARKET
Attorneys for Plaintiff
666 Old Country Road
Suite 600
Garden City, New York 11530
BY: BRUCE BARKET, ESQ.

SUFFOLK COUNTY ATTORNEY'S OFFICE
Attorneys for Defendants
H. Lee Dennison Building
100 Veterans Highway
Hauppauge, New York 11788
BY: RICHARD DUNNE, ESQ.

ALSO PRESENT:

Daniel Wirshup
Raymond Felice
Robert Amato

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the
respective parties herein, that filing,
sealing and certification be and the
same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the
form of the question shall be reserved
to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed
and sworn to before any officer authorized
to administer an oath, with the same force
and effect as if signed and sworn to before
the Court and that a copy of this
examination shall be furnished without
charge to the attorney representing the
witness testifying herein.

1 T H O M A S I A C O P E L L I ,
2

3 the witness herein, having first
4 been duly sworn by a Notary Public
5 of the State of New York, was
6 examined and testified as follows:

7 EXAMINATION BY

8 MR. BARKET:

9 Q. Please state your name for the
10 record.

11 A. Thomas Iacopelli.

12 Q. Have you ever been deposed before?

13 A. Possibly, yes. Many, many years
14 ago.

15 Q. In connection with what?

16 A. Something to do with someone suing
17 the City of New York.

18 Q. Over what?

19 A. I'm not sure of the exact grounds
20 of the suit.

21 Q. How were you involved?

22 A. I believe I was involved in an
23 arrest situation.

24 Q. Were you a named defendant in that
25 lawsuit?

A. I don't believe I was.

Q. Just a witness?

A. Possibly, yes.

Q. If I ask any question that's not perfectly clear to you, just indicate that and I will try to rephrase it. If you answer the question, we are all going to assume you understood it.

A. Very good.

Q. Have you been a party to a lawsuit as a plaintiff or a defendant?

A. I don't believe so.

Q. When you say "I don't believe so" --

A. I was never a plaintiff. I don't know if I was listed as a defendant or a witness of what I just said.

Q. You never sued anybody yourself?

A. No.

Q. Have you ever been sued other than this case?

A. I don't believe so.

MR. BARKET: Plaintiff's
Exhibit 3.

Thomas Iacopelli

6

(Notice was marked as
Plaintiff's Exhibit 3 for
identification, as of this
date.)

Q. I would like you to take a look at
what I marked as Plaintiff's Exhibit 3
(handing).

Have you ever seen that document
before?

A. (Witness examines Plaintiff's
Exhibit 3.)

I have never seen this before.

Q. How was it that you arrived for
today's deposition; how did you find out
about it?

A. I was informed by Mr. Dunne.

Q. Did you bring anything with you
today?

A. Aside from the transcript that you
produced, no. That's it.

Q. Transcript of the conversation
between yourself, Mr. Wirshup and Mr. Amato?

A. Yes.

Q. Were you asked to bring anything?

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A. No.

Q. Did you review anything?

A. Not today.

Q. How about prior to today in preparation for your deposition?

A. Prior to today, yes.

Q. What did you review?

A. Those transcripts.

Q. That's it?

A. That's it.

Q. How are you currently employed?

A. Currently employed as a detective investigator with Suffolk County District Attorney's office.

Q. How long have you been so employed?

A. Approximately five years.

Q. Where are you currently assigned in the DA's office?

A. I'm currently assigned to the Government Correction Bureau.

Q. How long have you been in that bureau?

A. Since inception, which is two years now.

1 Q. And before that?

2 A. Public Integrity Bureau.

3 Q. Same bureau, different name?

4 A. It's much larger now, yes.

5 Q. How about before the Public
6 Integrity Unit?

7 A. Assigned to the district court in
8 Central Islip.

9 Q. What was your job there?

10 A. Serve subpoenas, take statements,
11 gather evidence.

12 Q. What employment did you have before
13 that?

14 A. Retired New York City Policeman.

15 Q. When did you start with the Suffolk
16 DA's office?

17 A. July 1, 2002.

18 Q. When was Tom Spota elected, do you
19 remember, initially?

20 MR. DUNNE: November 2001.

21 Q. Did you know Mr. Spota before you
22 were hired?

23 A. No.

24 Q. How did you get the job out here?
25

A. I was called on an interview. I went for the interview. They asked me and I think that was in -- I don't recall the date of interview, but by Chief Creighton.

Q. Do you know anybody who worked for the Suffolk DA's office prior to working there yourself?

A. Yes.

Q. Who was that?

A. Detective Investigator Arthur Scalzo. I knew the previous chief investigator Robert Planska. I knew the deputy chief investigator, Frank Shields.

MR. BARKET: What's so funny, Mr. Dunne?

MR. DUNNE: Frank was a very funny guy.

Q. Who is the head of the DA squad now?

A. He is acting chief investigator, Inspector James Burke.

Q. Who is your immediate supervisor?

A. Sergeant James Shield.

Q. I'm sorry I'm skipping around.

1
2 How long did you work for the City
3 of New York Police Department?

4 A. Twenty-one years.

5 Q. Where were you employed before
6 that?

7 A. Worked for Sheraton Hotel chain.

8 Q. In law enforcement?

9 A. Security.

10 Q. Did you have any law enforcement
11 experience prior to that?

12 A. Prior to working for the City of
13 New York?

14 Q. No, the hotel chain.

15 A. No, I didn't.

16 Q. Where were you last assigned on the
17 New York City Police Department?

18 A. New York Drug Enforcement.

19 Q. How long were you with the drug
20 enforcement task force?

21 A. I did two stints there in total.
22 Approximately eight years.

23 Q. Was that your last eight years of
24 employment?

25 A. No. I was there as a sergeant and

I was there as a lieutenant and I retired from there a lieutenant.

Q. When did you retire from the New York City Police Department?

A. June 30, 2002.

Q. Prior to the Drug Task Force, where were you assigned?

A. I did a two-year stint as a lieutenant in Internal Affairs Bureau. I worked on patrol, midtown south precinct. I did a year and a half stint in the robbery squad. I worked in a training unit. I was a sergeant in the training unit. And rookies that graduate from the police academy, I would take them in the street and train them. I was patrol function.

I worked in Special Narcotics Division Special Projects Unit, 17th Precinct, for a short time. The 7th Precinct for a short time. 103rd Precinct for a short time.

Q. What is your educational background?

A. I have a Bachelor's of Science,

1 Criminal Justice.

2 Q. What year did you receive that and
3 where?
4

5 A. John J. College, criminal justice.
6 I graduated December of '79, I believe.

7 Q. When did you first become involved
8 in an investigation regarding Daniel Wirshup?

9 A. I was assigned to the Public
10 Integrity Bureau in October of '02. I had a
11 couple of cases. The end of '02, the
12 beginning of '03. I don't have the exact
13 date.

14 Q. Do you keep any records of that?

15 A. No.

16 Q. You don't keep records of
17 investigations you're involved with or when
18 you're assigned to it?

19 MR. DUNNE: Object to the
20 form of the question.

21 He said he didn't keep a
22 record of when he started. That's
23 a different question you're asking
24 now.

25 Q. Answer the different question.

A. Administrative staff opens up the cases for us they hand us a case folder. They do all the administrative paperwork, assigning of numbers.

Q. In what capacity were you assigned?

A. I was assigned as an investigator in the case.

Q. Was anybody else assigned at the same time?

A. Detective Investigator Amato.

Q. Anyone else?

A. Not that I recall.

Q. Who were you reporting to?

A. At the time, the bureau chief, Jeremy Scileppi

Q. In the DA's office?

A. Yes.

Q. Is that the assistant district attorney?

A. He is bureau chief now.

Q. He is an assistant district attorney?

A. Yes, he is.

Q. He was the individual you were

1 reporting to?

2 A. At that time, immediate supervisor.

3 Q. What were you asked to do?

4 A. We were asked to look into various
5 things in the Incorporated Village of
6 Patchogue, including sidewalks, road work,
7 the theatre, Patchogue Theatre and Performing
8 Arts.

9 Q. Did there come a time you met with
10 Mr. Wirshup?

11 A. Yes, there was.

12 Q. When was the first time?

13 A. The first time I actually met with
14 him and spoke with him was that per chance
15 meeting at the 7-Eleven.

16 Q. Were you at any meetings at the
17 DA's office when he appeared with his
18 attorney before that?

19 A. No, I was not.

20 Q. Were you aware of any meetings that
21 he had with the DA's office prior to your
22 meeting him at the 7-Eleven?

23 A. I'm not sure if I was aware of it.
24 I know subsequent there was a meeting but I
25

might not have been aware of it at the time I met him at the 7-Eleven.

Q. As part of your employment with the Suffolk County District Attorney's office, were you given any training?

A. No.

Q. You ended on June 30th and started on July 2nd, you said?

A. July 1st.

Q. So?

A. Did I get any training?

Q. Yes.

A. No.

Q. Was there any --

A. With the Suffolk County District Attorney's Office?

Q. Yes.

A. No.

Q. Did they give you any codes or rules or anything to follow?

A. No. Like a manual, a procedure manual, no.

Q. This will sound flip. I don't intend it to be flip.

1 Do I understand that you, on
2 June 30th, you woke up, went to work in
3 New York City, gave them your badge and ID
4 and July 1st you woke up and went to Suffolk
5 and they gave you another badge and ID,
6 basically what happened?
7

8 A. Basically that's what happened.

9 Q. The Suffolk County District
10 Attorney's Office -- let me back up.

11 In New York City, you went to an
12 academy, right?

13 A. That's correct.

14 Q. I take it at each stage of
15 promotion you were given tests?

16 A. That's correct.

17 Q. The patrol manuals and procedures
18 in place?

19 A. That's correct.

20 Q. In the Suffolk County District
21 Attorney's Office, you're a detective
22 investigator but you're a law enforcement
23 officer?

24 A. That is correct.

25 Q. You have the power to make arrests?

A. Yes.

Q. You carry a badge and a gun?

A. Yes.

Q. But instead of being employed from or by a traditional police department, you're employed by the district attorney's office?

A. That's correct.

Q. You're saying there is not any manual procedures that were given?

A. When I became employed by Suffolk County District Attorney's Office, I did not receive any formal training by the Suffolk County District Attorney's office.

Q. Were you given any manuals or procedures that the district attorney's office in Suffolk expected you to follow?

A. No.

Q. Do any exist?

A. I don't know.

Q. Getting to the 7-Eleven, you said the meeting that occurred there you had with Mr. Wirshup, you described it as a happenstance or a chance, I forgot the phrase.

1 A. I believe I said a chance meeting.

2 Q. When did this chance meeting take
3 place?

4 A. I don't have the exact date, but I
5 believe it was February of 2003, I believe.

6 Q. February 6th of '03?

7 A. If that's what it says, then I
8 agree to that.

9 Q. That being the transcript of --

10 A. Yes. That's what I'm looking at.
11 A copy of that transcript.

12 Q. Actually, the transcript -- this
13 is -- you never heard a tape of this
14 particular meeting, have you?

15 A. You supplied this transcript to us.
16 This is a copy of what you supplied to us.
17 It says on my copy of the transcript, "This
18 conversation was not recorded."

19 Q. It is some account of what was
20 said.

21 Have you read it over?

22 A. I have read it over.

23 Q. Is it accurate?

24 A. There are some inaccuracies but, I
25

guess, as a whole, it's accurate.

Q. Whoever prepared it wasn't as good as our reporter?

A. I guess not.

Q. But wasn't terrible?

MR. DUNNE: Whatever that means.

Objection to form.

Q. Did you have any notes or records of the meeting?

A. No, I do not.

Q. Did you make any at the time?

A. No, I did not.

Q. How did you recognize Mr. Wirshup?

A. As I stated before, we were assigned to look into the goings on, Patchogue Village Theatre, cement work, road work in the Incorporate Village of Patchogue. In the course of that, we would deliver subpoenas to Village Hall.

Mr. Wirshup was identified. I never had a conversation with him but he was identified as Daniel Wirshup. He was the head of the Highway Department, DPW

1 Department, and someone pointed him out to
2 me.
3

4 Q. Was he a target of an investigation
5 on February 6th of 2003?

6 A. Was he the target of the
7 investigation?

8 Q. Was he a target?

9 A. On that date, I believed that
10 Mr. Wirshup was somewhat involved in criminal
11 activity recording the Incorporated Village
12 of Patchogue.

13 Q. We'll come back to that, I believe,
14 a little later.

15 Where did you first see him,
16 Mr. Wirshup?

17 A. The first time I ever saw Daniel
18 Wirshup --

19 Q. Let me withdraw that and rephrase
20 it.

21 February 6, 2003, where was he,
22 precisely when you first saw him?

23 A. I saw him inside -- in fact, he was
24 standing in front of me on the line inside
25 the 7-Eleven, which is located on Waverly

Avenue, and I don't remember the cross street but it's on the corner of Waverly Avenue.

Q. Why were you at 7-Eleven?

A. I was getting coffee there.

Q. Is that near your office?

A. No, it's not.

Q. Is it near any office?

A. The district attorney's office?

Q. Yes.

A. No, it's not.

Q. What were you doing in that town?

A. We were investigating, like I said before, certain aspects that were going on in the Incorporated Village of Patchogue. It was a habit of myself and Detective Amato. I live Western Suffolk. Detective Amato lives in Eastern Suffolk. It was a habit when we were going to do work in the Village of Patchogue, we would meet at the 7-Eleven on Waverly Avenue, have a cup of coffee, discuss what we are doing that day and then from that point on, we would go ahead, do what we had on our schedule.

Q. What was your tour of duty?

1 A. I worked 9:00 to 5:00, Monday
2 through Friday.

3 Q. What time did the meeting
4 of Mr. Wirshup take place?

5 A. I believe -- according to this
6 transcript it happened at 12:00 p.m. in the
7 afternoon.

8 Q. Do you have any independent
9 recollection of that?

10 A. Daytime. I didn't look at my
11 watch. I don't know.

12 Q. What time would you meet with
13 Detective Amato?

14 A. Aside from this particular case
15 that we were working together, we had other
16 cases assigned to us. Sometimes earlier,
17 sometimes later, depending on what we were
18 doing that day.

19 Q. Did you arrive at the 7-Eleven that
20 day in one car or separate cars?

21 A. Separate cars.

22 Q. Both district attorney vehicles or
23 your own vehicles?

24 A. District attorney's vehicle.
25

1
2 Q. When you saw Mr. Wirshup, what did
3 you initially say to him?

4 A. I saw him at the counter. I was
5 getting coffee. I forget what he was
6 getting. I was standing behind him. I think
7 there was some sort of -- he was having a
8 problem with some sort of payment or
9 something. According to the transcript it
10 says, "Are you having trouble with your
11 credit card, Dan?" I don't have an
12 independent recollection of saying that but I
13 initiated the contact with him.

14 Q. What did you say to him?

15 A. I don't have an independent
16 recollection of what I said to him.

17 Q. Did you ask him at some point to
18 get into a police vehicle?

19 A. I introduced myself to him. I
20 identified myself.

21 Q. How did you identify yourself?

22 A. I told him my name and told him
23 where I worked.

24 Q. Did you show him any
25 identification?

1
2 A. I don't know if I showed him my
3 shield or not. I said I would like to speak
4 with him. I said my partner is over there.
5 At that time I think Detective Amato was out
6 of the car or he had just gotten out of the
7 car.

8 We walked over to my vehicle. We
9 introduced ourselves to him. We asked him if
10 he had a moment for us. In sum and sum and
11 substance, we asked if he had a moment for
12 us, we would like to speak with him.

13 Mr. Wirshup got in the back seat
14 behind the driver's seat of the vehicle. I
15 jumped in the driver's seat and Detective
16 Amato was in front passenger seat. It was my
17 vehicle.

18 Q. What did you want to talk to him
19 about?

20 A. We wanted to ask Dan -- we were
21 doing an investigation and we were trying to
22 cultivate Mr. Wirshup as a source of
23 information, possibly a confidential
24 informant.

25 Q. Were you aware that he was

represented by an attorney?

A. I was aware at that time he was represented by an attorney, I believe so.

Q. How did that affect your decision to have a conversation with him that day, if at all?

A. We didn't plan to interrogate Mr. Wirshup. We didn't plan to ask him anything about our investigation. We wanted to meet with Dan. I ran into him at that thing and I said, you know what, it's a good opportunity, let's see if we can speak to him. Let's see if he will get on board with us.

Q. When you say "cultivate him as an informant," what do you mean by that, what did you want him to do?

A. I wanted him to cooperate with us. I wanted him to share information with us.

Q. About what?

A. About the goings on in the Incorporated Village of Patchogue.

Q. When you say "goings on," I take it to mean criminal wrongdoing?

1
2 A. Yes, that's correct.

3 Q. That criminal wrong doing is the
4 subject matter of the investigation you had
5 been assigned to?

6 A. We only do criminal cases.

7 Q. Right. But it's that's specific
8 investigation?

9 A. Involving the Incorporated Village
10 of Patchogue, yes.

11 Q. Let's go through the transcript a
12 little bit if we can.

13 Do you have a copy of it?

14 A. I have it in front of me here.

15 Q. Let's start off by asking you what
16 you think some of the inaccuracies are.

17 A. I think here it says, "Iacopelli,
18 why don't you wait for me outside?" I don't
19 recall that. I think we walked out together.

20 It says here, "I'm Detective
21 Iacopelli from DA squad. Step over to the
22 car. Get in the back seat." That sounds
23 very forceful. It wasn't that type of
24 situation, as I said earlier.

25 Q. Cultivate?

1
2 A. Cultivate and get on our team.

3 In my experience dealing with those
4 type of situations, it's let's get together.
5 It's more like, "join our team." It's much
6 more -- it's not as formal as this.

7 Q. You were more polite?

8 A. It was more of a casual
9 conversation.

10 Q. More friendly?

11 A. Yes. Again, a lot of this stuff
12 sounds very forceful. My recollection of the
13 conversation that happened outside and inside
14 the car was much more informal, friendly.

15 When it gets to -- where it says
16 "Iacopelli," that's a bad spelling of my
17 name. It says, "Answering his cell phone
18 discussing how they found me at 7-Eleven."

19 Frankly we weren't looking for Dan
20 on that particular day. Like I said, it was
21 a chance meeting. We didn't have to go to
22 the DPW office. The best of my recollection
23 on that particular day was that myself and
24 Detective Amato were going to meet -- as a
25 normal course of business, we were going to

1
2 meet at 7-Eleven and discuss what we had and
3 my belief is we were supposed to meet
4 Detective Felice at Village Town Hall. I
5 don't remember having discussed going to the
6 DPW office. That's it.

7 Q. When you say you wanted him to
8 cooperate with you -- and I want to talk a
9 little bit about -- you said he was somewhat
10 involved.

11 What did you mean "he was somewhat
12 involved in criminal activity?"

13 A. We felt there was part of criminal
14 activity that was occurring there. We felt
15 it had to do with the installation of
16 sidewalks, curbing in the Village of
17 Patchogue. Mr. Wirshup was the highway
18 superintendent or the super for DPW. Part of
19 his job was to inspect those types of
20 construction, the concrete work, curbing work
21 and sign off on vouchers saying work was done
22 according to code, that the work was done the
23 way it was supposed to be done. Then
24 obviously the person who was doing the work
25 would get paid. We felt Mr. Wirshup was a

low man on the totum pole with respect to this.

Q. What did you believe his criminal conduct was, what did you think he was doing that was illegal?

A. What I thought he was doing was that he was okaying work that was substandard, that was never done, and that the contractor was getting paid for substandard work and work that wasn't done.

Q. Did you consider the possibility that whatever errors you discovered were simply that, errors in Mr. Wirshup's review of things?

A. It happened quite often and some of the work was obvious. I'm not an expert, not a mason expert or concrete expert. Even to my eye it seemed like it was curbing poured on top of curbing, blue stone. If you're going to put a new curb in, you remove the old one and put a new one in.

Q. Why do you say that?

A. Why do I say that?

Q. Yes.

1 A. Because I saw it.

2 Q. Why would you say that you would
3 remove the old curbing?
4

5 A. Curbing has to be -- according to
6 the code, curbing has to be a full 18 inches:
7 12 inches below the road surface and 6 inches
8 above the road surface. If you're putting it
9 on top of the existing blue stone there is
10 nothing below the road surface. That's
11 against the code. That's why I say that.

12 Q. No exception to the code that
13 you're aware of?

14 A. Not that I'm aware of.

15 Q. Other than the fact that it
16 happened, quote, "often," is there anything
17 else that indicates that this, whatever
18 errors you say were made in his certification
19 of work was deliberate as opposed to --

20 A. Again, some of the curbing is
21 supposed to be two separate pours, curbing
22 and sidewalk. They were monolithic pours.
23 It was pretty obvious. It was obvious to me,
24 and I'm not a mason or a concrete guy.

25 Q. Did Mr. Mr. Wirshup look at all

these or did his responsibilities include looking at all the sites individually or did he have people that worked for him?

A. To my knowledge, he was supposed to inspect all these sites himself and okay the payment for the work.

Q. Did you investigate or discover any motive on the part of Mr. Wirshup for engaging in this misconduct, as you put it?

A. It was my belief that Dan Wirshup was not acting alone. It was my belief that Dan Wirshup was directed to inspect them and to okay the substandard work that wasn't done.

Q. What was he getting, if anything, for okaying work that wasn't done and work that was substandard?

A. My belief was his job, his employment, that he owed other individuals.

Q. He was being threatened with his job?

A. I don't know that for a fact. That was my belief. My understanding is that he was appointed by the mayor.

1 Q. Which mayor?

2 A. My belief, Steve Keegan. We
3 thought Mayor Pontieri was involved in this,
4 who was the clerk, and that Dan was the
5 facilitator of this scheme to do substandard
6 work and get paid for it.

7 Q. When did Mr. Wirshup, to your
8 knowledge, first start in his position?

9 A. I don't have a date for that. I
10 don't know.

11 Q. When was Mr. Keegan elected mayor?

12 A. I don't have the exact date. I
13 don't recall.

14 Q. Do you have any evidence whatsoever
15 that Mr. Wirshup received money in exchange
16 for certifying substandard work or work that
17 was not?

18 A. In addition to his salary, no.

19 Q. So your belief was that Mr. Wirshup
20 was hired specifically to --

21 A. I didn't say that.

22 Q. He was appointed by Mr. Keegan or
23 Mayor Keegan, according to you, and at some
24 point he was told he had to certify this
25

work?

A. I didn't say that either.

Q. Okay.

A. I believe that in Mr. Wirshup's capacity he was the person who was supposed to check on this work and that he approved of this stuff on behalf of Mr. Keegan, possibly at his direction.

Q. Was Mr. Keegan arrested or indicted on this investigation?

A. No, he was not.

Q. Has he ever been?

A. Not to my knowledge.

Q. I guess we all experienced employees who are varying degrees of skill and responsibility at their respective jobs. I take it in the course of your duties as a police officer, you've seen police officers that have done what they are supposed to do and not done what they are supposed to do and done things they shouldn't do, right?

A. That's correct.

Q. You agree with me, I think, that sometimes people don't do things they

1 shouldn't do for reasons having nothing to do
2 with criminal intent; is that right?
3

4 A. That's --

5 MR. DUNNE: I'm going to
6 object to the form of the question.
7 Try to answer that as best
8 you can.

9 A. I guess that would be a fair
10 statement.

11 Q. So how do we get from Mr. Wirshup
12 certifying substandard work and certifying
13 work that wasn't done as being lazy, sloppy,
14 stupid, a bad employee, into him being part
15 of a criminal scheme; where is the nexus
16 between --

17 A. The nexus is the contractor.

18 Q. What did he get from the
19 contractor?

20 A. Mr. Wirshup, nothing -- from the
21 contractor, I don't believe Mr. Wirshup
22 received anything from the contractor.

23 Q. How is it then that --

24 A. Mr. Keegan.

25 Q. What was Mr. Wirshup's criminal

1
2 intent, where was it established, what
3 evidence is there that there was criminal
4 intent?

5 A. Criminal intent was it was obvious
6 that this was sub par work and it was obvious
7 that he was signing out off on jobs that
8 never existed. The work wasn't done. How do
9 you sign off on something if there is
10 supposed to be curbing at a particular
11 location and there is no new curbing there
12 but you sign off on it anyway? How --

13 Q. It makes you, at least, probably
14 not a good certifier --

15 MR. DUNNE: Don't answer
16 that.

17 Q. How do we go from him being lazy,
18 not wanting to leave his office and signing
19 off on the forms that were submitted to him,
20 going to criminal conspiracy?

21 A. The conspiracy was we felt that
22 because of Debut Contractors, Steve Melvid's
23 relationship with Mayor Keegan, and he did
24 give campaign donations to Keegan, that this
25 was payback for campaign donations. You come

1 to my Village, you do substandard or don't do
2 work and you get paid for it.

3 Q. Keegan said that?

4 A. I have no knowledge of that.

5 Q. The idea is Melvid?

6 A. Steven Melvid.

7 Q. Melvid was convicted in this,
8 right?

9 A. That's right.

10 Q. Ultimately convicted. Melvid was
11 doing work that what was substandard and not
12 doing it; is that right?

13 A. That's right.

14 Q. He was submitting vouchers for work
15 he hadn't done and certifying that he done
16 work to standards that he hadn't actually
17 performed, right?

18 A. That's correct.

19 Q. And getting paid for full jobs when
20 either only part of the job was done or no
21 job was done, right?

22 A. That's correct.

23 Q. Thus, obviously, he received large
24 amounts of money for basically fraud?
25

A. Yes.

Q. What was Mr. Wirshup getting out of this?

MR. DUNNE: Objection to form of the question.

It assumes there was a prerequisite of getting something, but answer the question as best you can.

MR. BARKET: Withdrawn and I will back up.

Q. Have you investigated financial crimes before?

A. My expertise was in narcotics, robberies. Especially narcotics cases. We did do a lot of financial investigations.

Q. Clearly people sell drugs to make money?

A. Yes.

Q. Have you ever had any training or expertise in white color fraud cases?

A. I had some training, yes.

Q. When?

A. In the last years.

1 Q. Where?

2 A. New York City Police Department,
3 Suffolk County DA's office.

4 Q. You did get training in Suffolk
5 DA's office? I thought you didn't get any.

6 A. You said hired, did I receive
7 training subsequent to being hired.

8 Q. Let me go back to that then.
9 Subsequent to being hired, were you
10 given training?

11 A. Yes.

12 Q. Where did that take place?

13 A. It took place in the HIDTA Training
14 Center somewhere in Farmingdale, Long Island.

15 Q. How long was this -- was it just
16 one?

17 A. It might have been a two-day
18 course. It was financial conspiracy and
19 financial training.

20 Q. Who presented it?

21 A. HIDTA, High Intensity Drug
22 Trafficking Area. It's a national
23 organization.

24 Q. High Intensity?

A. Drug Trafficking Area, HIDTA.

Q. That was sometime after 2002 and before today?

A. That's correct.

Q. There was a drug word used in the acronym.

A. High Intensity Drug Trafficking Area.

Q. So this was another narcotics related --

A. There was narcotics nexus to this, yes, but they'll do different types of training.

Q. That was a two-day course?

A. I believe it was two days. I'm not certain.

Q. Any other training subsequent to being hired by the Suffolk DA's office?

A. I went for an interview in interrogation training course.

Q. Where was that?

A. That was held at Atlantic City and was done by --

Q. How many days was that?

1
2 A. A week long.

3 Q. Summer or Winter?

4 A. Was nice weather. Might have been
5 September.

6 Q. Was it eight hour classes?

7 A. Yes, it was full day.

8 Q. Did you go to the classes?

9 A. Yes, I did.

10 Q. Good for you.

11 When was that, after or before this
12 investigation?

13 A. After.

14 Q. Go back to what I started to ask
15 you about.

16 You understand that, generally
17 speaking, people engage in criminal activity
18 based upon a motive. They have some personal
19 gain --

20 MR. DUNNE: Objection to
21 form.

22 It requires speculation. It
23 could or could not. You're saying
24 a general question. Ask him a
25 question.

MR. BARKET: Rich, I don't want to argue with you. You can object to the form. He doesn't have to answer the question and I will rephrase it.

Q. Is motive something that you consider in the course of your experience as a detective or police officer?

A. Yes.

Q. What did you perceive to be Mr. Wirshup's motive in engaging in this conduct?

A. His employment.

Q. Can you explain that a bit?

A. He was given a job by Steve Keegan. He was appointed to that position by the Mayor of Patchogue Village.

Q. That job is a legitimate job, isn't it?

A. Yes.

Q. How does him being given employment equal motive to help out Melvid?

A. The job was given to Daniel Wirshup. He didn't meet -- from what I

1 understand, he didn't meet the minimum
2 qualifications for the job. There was a test
3 for the job. He was appointed to the
4 position. There was a civil service exam for
5 the job. He was -- at the time of employment
6 when he was first employed, he was just
7 appointed to this position. He was just
8 given a job, I believe.
9

10 Q. What you're saying that he was
11 given a job --

12 A. Mayor Keegan.

13 Q. For employment?

14 A. Yes.

15 Q. As a condition of employment he had
16 to certify substandard or non --

17 A. I didn't say that.

18 Q. How does his employment equal
19 motive to participate in criminal conduct?

20 A. If he doesn't agree to go along
21 with Steve Keegan, then he no longer will
22 have the job. If he doesn't agree to obey
23 Steve Keegan, he doesn't have that job.

24 Q. Did you have any evidence that
25 there was this nexus between him certifying?

A. That was my belief.

Q. Is there any evidence?

A. Hard evidence, no.

Q. How about any evidence?

A. There was a connection between Melvid and Steve Keegan that Melvid gave campaign donations to Steve Keegan's campaign.

Q. You don't have any evidence at all that there was an explicit condition placed on Mr. Wirshup's employment that he had to do this in order to maintain it, do you?

A. No.

Q. Is there any evidence that to get this job he had to agree to do this?

A. No.

Q. That was in the course of this, you're searching for why he would have certified these jobs, that was your explanation for it?

A. That is my thought, yes.

Q. During the course of the investigation, was there ever any financial motive of discovering of Mr. Wirshup?

1 A. Not that I know of.

2 Q. Going back to the conversation you
3 had on February 6, 2003, have you worked with
4 informants before?
5

6 A. Yes.

7 Q. Confidential informants?

8 A. Yes.

9 Q. I guess there are different types
10 of people who become witnesses in criminal
11 cases, yes, different categories?

12 A. Are you speaking of witnesses or
13 informants?

14 Q. Both. A general category if
15 witnesses are called by the prosecution.

16 A. There are all different types of
17 witnesses and informants.

18 Q. Let me see if I can break it down
19 to a couple of broad categories. One is
20 civilian witness who happened to be a witness
21 in a crime and cooperated gets subpoenaed and
22 testifies?

23 A. That's correct.

24 Q. Two people, for whatever reason,
25 informants, confidential informants to the

1
2 police department either pay -- paid, or
3 agree, whatever reason, give information to
4 police department and eventually having to
5 testify?

6 A. That's correct.

7 Q. Another category, individuals
8 themselves have some criminal exposure, some
9 fear of being prosecuted, maybe even are
10 being prosecuted and in exchange for leniency
11 and not prosecuted agree to give information
12 and testify?

13 A. Yes, that's correct.

14 Q. I guess working in the narcotics
15 field you're fairly familiar with people
16 becoming confidential witnesses or
17 confidential informants?

18 A. Yes.

19 Q. It's the kind of bread and butter
20 of what narcotics enforcement is about, isn't
21 it?

22 A. Yes.

23 Q. In Mr. Wirshup's case, what
24 category -- how did you want him to be a
25 witness? When you say cultivate him, how

1
2 were you going to cultivate him as a witness?

3 A. What I wanted to do or, as I saw
4 it, I wanted him to give us information with
5 respect to Keegan and Melvid's relationship.

6 Q. When you say "cultivate," what were
7 you going to do?

8 A. We felt that Dan was the low man on
9 the totum pole, that Keegan was possibly the
10 top of that totum pole. We wanted to use Dan
11 to get to Keegan.

12 Q. What incentive did you give Dan to
13 do that?

14 A. That's why we tried to cultivate
15 him. That's why we spoke to him nicely. We
16 try to bring him onto our team.

17 Q. What incentive did you give Dan?

18 A. I didn't give any incentive to Dan.

19 Q. In other words, what motivation did
20 you give him?

21 A. That he possibly had criminal
22 exposure.

23 Q. So what you essentially conveyed to
24 him is that he could be prosecuted criminally
25 and that if he cooperated and joined your

team, as you put it, that prosecution may not take place at all or if it did --

A. I don't have the authority to say that. I don't believe I ever told that to Mr. Wirshup.

Q. Did you imply that?

A. I'm not a mind reader. We didn't talk about his criminal exposure. We didn't speak specifically about the activities that he did or did not commit. We basically tried to cultivate him. We believed there was criminal activity afoot and we needed his cooperation and we wanted his cooperation.

Q. In exchange for that cooperation, what did you do for him?

A. I am not authorized to do anything for him.

Q. What would the district attorney office do?

A. With his attorney he would have to sit down with the district attorney's office and come to some sort of decision.

I am not authorized to do it. I don't sit in on those meetings. That's

1 usually between the attorneys.
2

3 Q. The conversation you had with
4 Mr. Wirshup on of February 6, 2003, I'm going
5 to read you parts of this. This is quoted
6 from Mr. Amato: "Dan, you're in big
7 trouble" --

8 MR. DUNNE: This is not a
9 quote and the same caveat and
10 objection that I raised at the
11 first deposition, I think it's
12 useful to use it for the purpose of
13 deposition but we are no way
14 indicating that this is an accurate
15 transcript.

16 MR. BARKET: At some point
17 we will provide our own.

18 MR. DUNNE: Just so the
19 record is clear, this is his
20 recollection of what took place.
21 You're stating it as if that's a
22 fact. You started your question as
23 if this was a fact. Already
24 clarified.

25 MR. BARKET: Rich, I don't

want to argue with you --

MR. DUNNE: I'm just clarifying the way in which you asked the question.

MR. BARKET: I thought we went over the transcript in the beginning. Let me ask these questions again. Maybe I missed something.

Q. You said the transcript was basically accurate, that there were a few things that were not accurate. You went over the transcript and you said it's a little less friendly, less polite or a little harsher than you recall being and that there was something -- you didn't recall the DPW office.

Is that essentially what you testified to a few minutes ago?

A. What?

Q. DPW -- Department of Public Works, I'm assuming, office?

A. Yes, I did say that right.

Q. Other than that, you said the

1 transcript was, as far as you recall,
2 basically accurate, yes?

3 A. Fairly accurate.

4 Q. I'm going to read from parts of it
5 here and I'm going to ask you questions about
6 it. Obviously I'm reading from it so I'm
7 going to quote it. It says "Amato" on the
8 first page. "Dan, you're in big trouble.
9 There were improper contracts. Your name was
10 all over these documents. People were
11 talking and you're being set up as a fall
12 guy, a patsy. You're going to have your name
13 splashed all over newspapers. I could or
14 would be fired from my job if I didn't
15 cooperate with them."

16 Do you see that?

17 A. I see it. It doesn't make any
18 sense to me.

19 Q. It does if you --

20 MR. DUNNE: No, this is not
21 an actual transcript.

22 Q. "Dan, you're in big trouble."

23 Do you remember words to that
24 effect being said?
25

1
2 A. Again, and I dealt with informants
3 for many, many years, in this situation we
4 were not trying to be threatening to Dan.
5 Like I said before, this is a lot harsher
6 than my recollection of how the conversation
7 went. We want Dan to come up on our side.
8 We want him to be a team player with us. In
9 my experience, threats at this stage of
10 cultivating a guy, threats don't work that
11 well. It's been my experience. This seems
12 very threatening. I don't recall that.
13 You're asking me -- "Dan, you're in big
14 trouble." What was the date on this?

15 Q. February 6th.

16 A. '03. It's more than four years
17 ago. Do I have an independent recollection
18 of Detective Amato saying, "Dan, your in big
19 trouble?" No, I don't.

20 Q. Do you have a recollection of
21 either you or Detective Amato indicating to
22 Mr. Wirshup that he was the target of a
23 criminal investigation and he could, himself,
24 be arrested and indicted?

25 A. In this particular incident on

1 February 6, 2003, I don't have an independent
2 recollection of that.
3

4 Q. Do you have independent
5 recollection of talking to him at all about
6 his lawyer?

7 A. Where is that, sir?

8 Q. It would be in your mind.
9 Independent recollection in your mind.

10 A. I thought you were looking at this
11 transcript.

12 Q. I may very well have been.

13 A. During our conversations -- and
14 there were a few conversations with
15 Mr. Wirshup -- we did speak about his
16 attorney, yes.

17 Q. I'm talking about the one on
18 February 6th, what did you talk about or what
19 was the nature of the conversation about his
20 attorney?

21 A. In sum and substance, my
22 recollection is that Mr. O'Connell, I believe
23 that's his name, we wanted Dan to cooperate
24 with us and that Mr. O'Connell might be
25 representing other targets of the

1 investigation and we weren't confident
2 sitting across the table with Mr. Wirshup
3 exchanging information with Mr. Wirshup with
4 Mr. O'Connell present. We felt that there
5 was a conflict there. We also felt that
6 Mr. O'Connell would be put into a very
7 difficult situation if he was present during
8 those type of conversations.
9

10 Q. You explained that to Mr. Wirshup?

11 A. Not certain if it was done at this
12 conversation but over the course of our
13 conversations, yes.

14 Q. I'm trying to limit it --

15 MR. DUNNE: He answered the
16 question.

17 Q. I'm trying to limit it, at least at
18 this point, what was said on February 6, '03.

19 A. It was said over the course of
20 conversations. I don't know if it was
21 exactly put that way during this conversation
22 but I know we did express a concern that
23 Mr. O'Connell might have had the conflict and
24 we weren't comfortable sitting across the
25 table with Daniel Wirshup and Mr. O'Connell

1
2 and exchanging information.

3 Q. On February 6, 2003, the people
4 involved in this investigation, the district
5 attorney's office, were yourself, Mr. Amato
6 and who else?

7 A. With regard to Patchogue was
8 myself, Detective Amato, Ray Felice, his
9 partner, Charles Bartel. Obviously there
10 were different prosecutors involved.

11 Q. Who were the prosecutors?

12 A. John Scott Prudenti. I think Chris
13 Nicolino. That's about it, I think.

14 Q. Had there been any discussions
15 prior to February 6th between yourself and
16 anyone else involved in the investigation
17 with the DA's office about the propriety of
18 Mr. O'Connell representing Mr. Wirshup?

19 A. I mean, myself and Detective Amato
20 talk about trying to cultivate Dan as an
21 informant. We knew that there was a
22 relationship that Mr. O'Connell had, a
23 professional as well as social relationship
24 that Mr. O'Connell had with Steve Keegan, the
25 Mayor of Patchogue Village.

1
2 Q. The two of you, yourself and
3 Mr. Amato, had discussions about the
4 propriety of Mr. O'Connell representing
5 Mr. Wirshup in light of his personal,
6 professional relationship with Keegan?

7 A. Myself and Detective Amato were
8 uncomfortable and we didn't want to sit
9 across the table and exchange information
10 with Mr. Wirshup while Mr. O'Connell was
11 sitting there.

12 Q. I understand that.

13 Did you all talk about it?

14 MR. DUNNE: Who is "all"?

15 Q. You and Mr. Amato.

16 A. I just said yes, we did. We
17 weren't comfortable with the situation.

18 Q. Did you express those concerns to
19 the assistant district attorneys involved in
20 the case?

21 A. I'm not sure. I don't know. We
22 certainly expressed them to Dan Wirshup.

23 Q. Getting to the cultivation of
24 Mr. Wirshup, I understand or I heard you say
25 several times you wanted to be friendly, and

1 threats weren't appropriate at this stage.
2 How did you exactly try to cultivate him?
3 What did you do? What did you say?
4

5 A. Dan come on our team. We know
6 there are problems in the Village. We are
7 investigating the Village.

8 This is off the top of my head.
9 There are no notes on this. "We feel that
10 you were sort of like a fall guy." I used --
11 one of my phrases I used is, "You're a small
12 fish in a big pond. We don't believe that
13 you're the guy that's calling the shots here,
14 but basically you have been used as a patsy."
15 Those type of things. And that it wasn't his
16 idea to do this but other people's idea to
17 involve him in criminal activity.

18 Q. I just want to spell out explicitly
19 some of the metaphors or analogies. You say
20 "a small fish in a big pond." You mean a big
21 criminal pond, people involved in a variety
22 of criminal activity, right?

23 A. Yes, that's correct.

24 Q. A small fish being somebody who is
25 involved in criminal activity but is not --

A. High up on the totum pole.

MR. DUNNE: That's another metaphor, by the way.

Q. It wasn't his idea to start this criminal conspiracy; is that what you were saying?

A. We posed that to Dan that way, that we believed he wasn't the guy calling the shots.

Q. Did you indicate to him that if he didn't help you, that things could get rough for him in any way?

A. At some point in time, yes, we did have those conversations.

Q. How about on February 6th, did you indicate to him that he could be arrested or prosecuted or his name might be in the paper?

A. I'm looking at this transcript. This is what the transcript says. Do I have an independent recollection of that? No, I don't. I don't recall it as being a threatening conversation with Mr. Wirshup.

Q. I guess the cultivation -- tell me if I'm wrong about this. I understand

1 cultivation to be kind of a two part or at
2 least a two part process.

3 One is you indicate to him as
4 gently as you can that you believe he is
5 involved in some criminal activity; is that
6 right?
7

8 A. That's correct.

9 Q. Second, you say if you help us, if
10 you cooperate, if you do the right thing, the
11 harm that will come to flow from that
12 criminal prosecution would be lessened
13 because you will be doing the right thing.
14 You will be cooperating with law enforcement.
15 You will be demonstrating yourself to be an
16 honest person at this point and time; is that
17 true?

18 A. In sum and substance.

19 Q. In sum and substance, cultivation
20 of an individual that you want to
21 essentially -- and, again, I use your
22 metaphor -- switch teams, is that everybody
23 on that team is going to lose, they're going
24 to go to jail and get prosecuted. We are the
25 good guys. Come and join us. Do the right

1
2 thing here. Testify truthfully. Help us.
3 Cooperate, and that will help reduce your
4 exposure. That's essentially the two
5 components of this whole cultivation, isn't
6 it?

7 A. That's correct.

8 Q. There are different ways of saying
9 that, isn't there?

10 A. Yes, a multitude of ways.

11 Q. There are different ways of saying
12 that -- multitude of ways. One way would be
13 very harsh and tell him you are going to go
14 to prison for a long time and if you don't
15 cooperate, you're going to be going to jail,
16 right?

17 A. That's one.

18 Q. That's not something you did with
19 Mr. Wirshup on February 6th, is it?

20 A. Not what I recall.

21 Q. Another way to do it would be to be
22 gently put it to him that they have some
23 criminal exposure?

24 A. That's correct.

25 Q. That's what you did with

1
2 Mr. Wirshup?

3 A. That's correct.

4 Q. You indicated to him that --

5 A. I barely spoke to Mr. Wirshup.

6 Q. You or Detective Amato indicated to
7 Mr. Wirshup there was an obstacle to him
8 joining your team?

9 A. That's correct.

10 Q. That obstacle was the individual he
11 had chosen to have as his attorney, correct?

12 A. That's correct.

13 Q. Did you indicate to him, in sum and
14 substance, either you or Detective Amato,
15 that if he didn't replace his attorney, he
16 would not be able to join your team?

17 A. The indication was we that where we
18 were not comfortable with, as I stated
19 before, sharing information with Mr. Wirshup
20 and his attorney Patrick O'Connell present
21 during those meetings.

22 Q. Did you or Detective Amato
23 communicate to Mr. Wirshup that unless he
24 found a new lawyer, he wouldn't be able to
25 cooperate with you, you wouldn't sit down and

1 talk to him with O'Connell as his attorney?

2 A. On this February 6th, I'm not
3 certain. I don't know if that is expressed
4 to him on those terms.
5

6 Q. Did you express to him concerns of
7 Mr. O'Connell representing him in this
8 context?

9 A. Yes, we did.

10 Q. Did you ever participate in
11 discussions with any member of the district
12 attorney's office about having Mr. O'Connell
13 formally removed or disqualified from
14 representing Mr. Wirshup?

15 A. I don't recall that.

16 Q. The factual basis you believed
17 Mr. O'Connell had a professional/personal
18 relationship with Mr. Keegan was what?

19 A. Was based on information that was
20 gleaned during the course of the
21 investigation.

22 Q. Tell us what that is.

23 A. At one time, Mr. Keegan, I think,
24 appointed Mr. O'Connell to either a Deputy
25 Town Attorney or a part-time Village Justice.

1 They were both -- from my understanding, they
2 were both from Patchogue and had a long
3 standing relationship just from being in the
4 same area. They had similar friends.
5

6 Q. How did you learn this information?

7 A. It was gleaned during the course of
8 investigation.

9 Q. Was information conveyed to the
10 assistant district attorneys in this case?

11 A. It possibly could have been, yes.

12 Q. Tell me why you thought it was
13 appropriate to have a conversation with
14 Mr. Wirshup without his attorney being
15 present?

16 A. He wasn't in custody. We weren't
17 interrogating him. We didn't ask anything
18 about the crimes we felt he committed. It
19 wasn't an interrogation. He was free to
20 leave or not talk to us at any time.

21 Q. So you thought it was appropriate
22 because he was free to leave?

23 A. He wasn't in custody.

24 Q. I'm just repeating to you one at a
25 time.

One, he was free to leave. Two, you weren't asking him about his specific crimes.

A. It was not an interrogation. We weren't asking him about any criminal behavior.

Q. In the course of your experiences as a police officer or detective, have you learned that individuals who -- just assume for a second that are involved in criminal activities do have the opportunity to cooperate with law enforcement. Did they make different decisions, some cooperate, some don't?

A. Can you repeat that question?

Q. You're aware of individuals who have been involved in criminal activity who are given a choice as to whether or not they are going to cooperate with law enforcement? Some choose to cooperate and some choose to don't?

A. Yes.

Q. The individual, when given that choice, in your course of experience, the

1
2 individuals are given a choice at different
3 points in the investigation, aren't they?

4 In other words, you can pick
5 somebody up, for example, on a buy and bust.
6 He gets arrested that night and, boom, right
7 away he cooperates and goes back in the
8 street to get his supplier, right?

9 A. Yes.

10 Q. Could be that you execute a search
11 warrant, you arrest somebody. They're in,
12 they're prosecuted. They have a lawyer and
13 they're indicted but they are going to go out
14 and cooperate anyway, right?

15 A. Yes.

16 Q. If you kind of run through the
17 spectrum of an investigation from the first
18 word that some crime has occurred all the way
19 through until -- even right up until the
20 sentence, an individual, anywhere along that
21 line, could, if you want him to and he wants
22 to or she wants to, choose to cooperate; is
23 that right?

24 A. That's correct.

25 Q. In the course of your experience as

1
2 a police officer, you've seen people make
3 different decisions all along that spectrum;
4 isn't that true?

5 A. That's correct.

6 Q. In the individuals who have
7 lawyers, has it been your experience these
8 individuals consult with their lawyers prior
9 to making a decision to cooperate?

10 A. Individuals that are already
11 represented by counsel?

12 Q. Right.

13 A. It varies in different situations.
14 In this particular situation we expressed to
15 Mr. Wirshup we were not comfortable with his
16 counsel. With respect to him becoming an
17 informant, I don't know what he would do. I
18 don't know if he would go to his attorney or
19 sit back and say, well, you know, maybe I
20 should get another attorney. I'm not a mind
21 reader. I don't know what his thought
22 processes was.

23 Q. You understand, prior to the
24 February 6th meeting, someone in
25 Mr. Wirshup's situation might very well want

1
2 to consult with a lawyer prior to making a
3 decision to cooperate with you?

4 A. Throughout our conversations with
5 Mr. Wirshup, we instructed him and we advised
6 him to be represented by counsel, by an
7 attorney, but that we weren't comfortable
8 with him being represented by Mr. O'Connell.

9 Q. Let me see if I can boil this down
10 to simplest terms.

11 You were perfectly happy to have
12 Mr. Wirshup represented by an attorney and
13 actually wanted him to be represented by an
14 attorney; is that right?

15 A. That's correct.

16 Q. You wanted him to cooperate with
17 your office?

18 A. Yes.

19 Q. You thought he was involved in some
20 criminal activity but not seriously involved?

21 A. We thought he was more a
22 facilitator than the actual --

23 Q. Perpetrator?

24 MR. DUNNE: Objection.

25 Q. I don't know. I'm just completing

your sentence. Complete it yourself.

A. We thought he was more the facilitator than the brains of the organization. He wasn't the guy calling the shots.

Q. The purpose of meeting with Mr. Wirshup or the conversation with Mr. Wirshup on February 6th wasn't to get him to incriminate himself, was it?

A. No.

Q. You didn't want to find out -- get admissions from him?

A. No.

Q. It was to get him to get a different lawyer so that he could cooperate?

A. Like I said earlier, it was a chance meeting. We had discussions about developing Dan Wirshup as an informant and when we did have it on that day, that was the purpose of bringing him on board with us.

Q. The purpose was not to have him make admissions but to have him find an attorney that you were comfortable working with?

1
2 A. Because we wanted him to cooperate
3 with us.

4 Q. Right. It wasn't to try to get to
5 speak to him without his lawyer?

6 A. No, absolutely not.

7 Q. Did you consult with the district
8 attorney once you saw Mr. Wirshup at the
9 7-Eleven and decided to have this
10 conversation with him? Did you consult with
11 anybody about the propriety of having a
12 conversation?

13 A. I remember going to the chief
14 investigator and telling him --

15 Q. No, let me rephrase the question.
16 After you saw him?

17 A. Right.

18 Q. Before you had the conversation,
19 you see him in line. Before you ask him to
20 get in the car, did you consult with anybody
21 from the district attorney's office other
22 than Detective Amato about the propriety of
23 speaking with him?

24 A. No.

25 Q. After you had the conversation with

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1 him on February 6th, did you tell anyone from
2 the district attorney's office, any attorney
3 with the district's attorney office, that you
4 had the conversation with him?
5

6 A. I must have, yes.

7 Q. Do you remember who?

8 A. The attorney could have been John
9 Prudenti. I do remember having a
10 conversation with the chief investigator.

11 Q. What was that?

12 A. Robert Creighton. That was the
13 first person we notified that we had this
14 meeting with Dan Wirshup and that we might be
15 getting -- the office might be getting a
16 phone call from Pat O'Connell because, at
17 that time, we weren't sure if Dan Wirshup
18 wanted to come on board or not.

19 Q. What was the reaction of the
20 attorney that you spoke with after you spoke
21 with him?

22 A. I don't remember. I'm not
23 absolutely certain. I'm surmising that we
24 notified Prudenti.

25 Q. Did anyone ever tell you to cease

1
2 contact with Mr. Wirshup without his attorney
3 being present or authorizing it?

4 A. After the initial contact with
5 Mr. Wirshup?

6 Q. Right.

7 A. At some point and time, yes, but it
8 wasn't right after. That wasn't the initial
9 reaction. The time thereafter then, I
10 believe once, I guess, Mr. O'Connell came
11 forward and we realized Dan Wirshup wasn't
12 going to cooperate with us and wasn't going
13 to become an informant.

14 I was like, okay, not going to
15 become an informant. Don't talk to him.
16 Stop trying to cultivate him.

17 Q. Through Mr. O'Connell saying he
18 wasn't going to cooperate? Did someone tell
19 you to stop talking to Mr. Wirshup without
20 Mr. O'Connell's approval?

21 MR. DUNNE: Client.

22 Q. Client?

23 A. I don't recall somebody saying,
24 "Don't contact Dan."

25 Q. Did you understand that to be

1 approval for what you were doing then?

2 A. We continued to contact and
3 Mr. Wirshup actually contacted us. He took
4 the initiative to contact us, on occasion.

5 Q. If you continued to speak with
6 Mr. Wirshup without Mr. O'Connell's knowledge
7 or approval?

8 A. Hindsight is 20/20. Obviously
9 Mr. O'Connell knew. So Mr. O'Connell knew we
0 were speaking to him. I was under the
1 assumption that he didn't know and we
2 continued to speak to Dan Wirshup, yes.

3 Q. The prosecutors involved in this
4 investigation knew you were doing this?

5 A. I believe they did, yes.

6 Q. You took their knowledge and
7 silence as approval of your conduct?

8 A. I dealt with informants many, many
9 times over the years. In my own mind I
0 didn't think I was doing anything wrong.

1 Q. I'm not asking about your mind.
2 I'm asking what you understood.

3 A. I thought I was doing the right
4 thing. I was trying to cultivate.

lines 14-
and
next
page
line 2-7

1
2 Q. What I'm asking you is the
3 prosecutor's knowledge that you were doing
4 this in silence. In other words, they didn't
5 object to it. Did you understand that to be
6 approval for what you were doing?

7 A. That would be fair to say.

8 Q. They are not shy individuals. If
9 they felt what you were doing was
10 inappropriate or wrong or didn't want you to
11 do it, they would have told you to stop?

12 A. Yes.

13 MR. DUNNE: Objection to
14 form.

15 You can answer.

16 A. Yes.

17 Q. Do you have any knowledge or
18 evidence of his criminal intent?

19 A. Of his intent?

20 Q. Yes.

21 A. Physical evidence?

22 Q. Verbal? Anything; physical,
23 testimonial, anything.

24 A. No.

25 Q. Did you at all participate in the

press releases that were done when
Mr. Wirshup was arrested?

A. Participate to what?

Q. Did you give information to the
press?

A. Did I? No.

Q. Did you give photographs to the
press?

A. I did not, no.

Q. Did you alert the press when the
individuals would be arrested?

A. No.

Q. Did you testify in the Grand Jury
in this case?

A. No.

Q. Did you issue a subpoena for people
to testify in the Grand Jury?

A. Yes.

Q. Did you transport witnesses to
testify?

A. I don't remember that I did.

MR. BARKET: I'm done,
subject to production of the
documents that we discussed

earlier.

MR. DUNNE: Fine.

Before we get out today, I
want to clarify.

EXAMINATION BY

MR. DUNNE:

Q. Detective, let me ask you this...
Counsel asked you questions about motive or
about direct evidence that you had of
Mr. Wirshup's activity at the time of the
conversation.

When, approximately, in relation to
February of '03, did that indictment
containing charges against Daniel Wirshup get
handed up?

A. Quite awhile after that. Quite
awhile. I don't have the date of the
indictment. It was after that meeting.

Q. Subsequent to the meetings that
counsel had asked you about and that have
been the subject of a large portion of the
depositions thus far, did you go out to speak
to any homeowners?

A. Yes, we did.

A. It confirmed those beliefs.

MR. DUNNE: I don't have
anything further.

-o0o-

(Whereupon, the examination
of Thomas Iacopelli was concluded
at 12:38 p.m.)

THOMAS IACOPELLI

Subscribed and sworn to
before me this _____ day
of _____, 2007.

NOTARY PUBLIC

Thomas Iacopelli

76

A. It confirmed those beliefs.

MR. DUNNE: I don't have
anything further.

-o0o-

(Whereupon, the examination
of Thomas Iacopelli was concluded
at 12:38 p.m.)

THOMAS IACOPELLI

Subscribed and sworn to
before me this _____ day
of _____, 2007.

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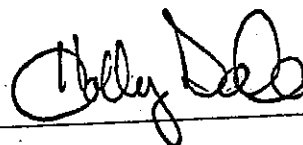
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C E R T I F I C A T E

I, HOLLY DALOIA, a Notary Public
within and for the State of New York, do
hereby certify:

That the witness(es) whose testimony
is hereinbefore set forth was duly sworn by
me, and the foregoing transcript is a true
record of the testimony given by such
witness(es).

I further certify that I am not
related to any of the parties to this action
by blood or marriage, and that I am in no way
interested in the outcome of this matter.



HOLLY DALOIA

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